

Department of Energy

§ 708.5

by a contractor if such prior employee's complaint alleges that employment was terminated in violation of § 708.5. The determination of whether a person has standing as an employee shall be made without regard to the on- or off-site locale of the person's work performance.

Field organization means a DOE field-based office that is responsible for the management, coordination, and administration of operations under its purview.

Head of Field Element means an individual who is the manager or head of a DOE operations office, other field office, or field organization.

Hearing Officer means an individual appointed by the Director, Office of Hearings and Appeals, pursuant to § 708.9.

Management and Operating Contract means an agreement under which DOE contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -leased research, development, special production, or testing establishment wholly or principally devoted to one or more of the programs of DOE.

Official of DOE means any officer or employee of DOE whose duties include program management or the investigation or enforcement of any law, rule, or regulation relating to Government contractors or the subject matter of a contract.

Party or *parties* mean(s) any employee, contractor, or other party named in a proceeding under this part.

Work performed on-site means work performed within the boundaries of a DOE-owned or -leased facility. However, work will not be considered to be performed "on-site" when pursuant to the contract it is the only work performed within the boundaries of a DOE-owned or -leased facility, and it is ancillary to the primary purpose of the contract (e.g., on-site delivery of goods produced off-site).

Subpart B—Procedures

§ 708.5 Prohibition against reprisals.

(a) A DOE contractor covered by this part may not discharge or in any manner demote, reduce in pay, coerce, restrain, threaten, intimidate, or other-

wise discriminate against any employee because the employee (or any person acting pursuant to a request of the employee) has—

(1) Disclosed to an official of DOE, to a member of Congress, or to the contractor (including any higher tier contractor), information that the employee in good faith believes evidences—

(i) A violation of any law, rule, or regulation;

(ii) A substantial and specific danger to employees or public health or safety; or

(iii) Fraud, mismanagement, gross waste of funds, or abuse of authority;

(2) Participated in a Congressional proceeding or in a proceeding conducted pursuant to this part; or

(3) Refused to participate in an activity, policy, or practice when—

(i) Such participation—

(A) Constitutes a violation of a Federal health or safety law; or

(B) Causes the employee to have a reasonable apprehension of serious injury to the employee, other employees, or the public due to such participation, and the activity, policy, or practice causing the employee's apprehension of such injury—

(1) Is of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude there is a *bona fide* danger of an accident, injury, or serious impairment of health or safety resulting from participation in the activity, policy, or practice; and

(2) The employee is not required to participate in such dangerous activity, policy, or practice because of the nature of his or her employment responsibilities;

(ii) The employee, before refusing to participate in an activity, policy, or practice has sought from the contractor and has been unable to obtain a correction of the violation or dangerous activity, policy, or practice; and

(iii) The employee, within 30 days following such refusal, discloses to an official of DOE, a member of Congress, or the contractor, information regarding the violation or dangerous activity, policy, or practice, and explaining why he has refused to participate in the activity.

(b) An employee disclosure, participation, or refusal described in § 708.5(a) (1), (2), or (3) shall be subject to this part only if it relates to activities alleged to have occurred under work performed by the contractor for DOE. This part is not intended to override any other provision or requirement of any regulation pertaining to Restricted Data, national security information, or any other classified or sensitive information, and the protections of this part shall not apply to any person who, in the course of making a disclosure described in § 708.5(a) (1) or (3), or in the course of participating in a proceeding described in § 708.5(a)(2), improperly discloses Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation.

§ 708.6 Filing a complaint.

(a) An employee who believes that he or she has been discriminated against in violation of this part, and who has not, with respect to the same facts, pursued a remedy available under State or other applicable law, may file a complaint with DOE through the Head of Field Element at the field organization. For purposes of this part, a complaint shall be deemed to have been pursued under State or other applicable law if the employee has, pursuant to proceedings established or mandated by State or other applicable law, at any time prior to, or concurrently with, the filing of a complaint with DOE, or at any time during the processing of a complaint filed with DOE, filed or submitted any complaint, action, grievance, or other pleading with respect to that same matter. The pursuit of a remedy under a negotiated collective bargaining agreement will be considered the pursuit of a remedy through internal company grievance procedures and not the pursuit of a remedy under State or other applicable law. The limitations period specified in § 708.6(d) shall be suspended upon the filing of a complaint pursuant to State or other applicable law, and the mere filing of a complaint pursuant to State or other applicable law shall not bar the employee from re-instituting or filing a complaint with DOE if the matter

cannot be resolved under State or other applicable law due to a lack of jurisdiction.

(b) The Head of Field Element may designate an individual to serve as point of contact for processing the complaint and for undertaking the responsibilities under § 708.7.

(c) A complaint filed under paragraph (a) of this section need not be in any specific form provided it is signed by the complainant and contains the following: A statement setting forth specifically the nature of the alleged discriminatory act, and the disclosure, participation or refusal giving rise to such act; a statement that the complainant has not, as described in paragraph (a) of this section, pursued a remedy available under State or other applicable law; and an affirmation that all facts contained in the complaint are true and correct to the best of the complainant's knowledge and belief. Additionally, the complaint must contain a statement affirming that:

(1) All attempts at resolution through an internal company grievance procedure have been exhausted;

(2) The company grievance procedure is ineffectual or exposes the complainant to employer reprisals; or

(3) The company has no such procedure.

The complaint must state the factual basis for such affirmation; and, if applicable, the date on which internal company grievance procedures were terminated and the reasons for termination.

(d) A complaint filed pursuant to paragraph (a) of this section must be filed within 60 days after the alleged discriminatory act occurred or within 60 days after the complainant knew, or reasonably should have known, of the alleged discriminatory act, whichever is later. In cases where the employee has attempted resolution through internal company grievance procedures as set forth in paragraph (c) of this section, the 60-day period for filing a complaint shall be tolled during such resolution period and shall not again begin to run until the day following termination of such dispute-resolution efforts.

(e) Within 15 days of receipt of a complaint filed pursuant to paragraph (a)